IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15444 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SIKANDAR IKBALBHAI FULANI - Petitioner(s)

Versus

COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 13/09/2005

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India challenges the order of detention dated 30th June, 2005 passed by the Commissioner of Police, City of Rajkot, in exercise of powers under Subsection 1 of Section 3 of the Gujarat Prevention of Antisocial Activities Act, (for short, the 'PASA Act'), 1985, detaining the detenue under Section 2(b) of the Act.

2. The order of detention and the grounds of detention showing various offences registered in the City of Rajkot against the detenue were supplied. It also states about remedy under ordinary law, to prevent detenue from indulging into prejudicial activities, is not sufficient. Considering the above facts, the detaining authority has come to the conclusion that the activities of the detenue are prejudicial to the maintenance of the public order and the general

health of the public.

3. The above order is impugned on the ground that registration of offence under the Bombay Prohibition Act, by itself can not have nexus with the prejudicial activities of the detenue resulting into disturbance of public order as submitted by the learned advocate for the petitioner that at the most registration of such crimes is a question of law and order. Therefore, the action of the authority is punitive and not preventive. Reliance is also placed on the decision of the cases reported in **AIR (1989) SC 491** and the decision of this Court in **Letters Patent Appeal No.223 of 2000** in support of above arguments.

4. Learned Assistant Government Pleader Mrs. Hansha B. Punani has argued that the activities of the detenue are no doubt prejudicial to the public order and general health of the public since three different crimes have been registered under the Provisions of Bombay Prohibition Act, 1959. Therefore, according to her, the order of detention

is to be upheld by this Court.

5. Having considered the rival submissions of the learned advocates and on perusal of the record I am inclined to accept the submissions of the learned advocate for the petitioner that registration of crimes as stated in the order of detention and the grounds supplied therein, is a question of maintenance of law and order and by itself it cannot be said that the activities of the detenue are prejudicial which may disturb even tempo of the public life or general health of the public. In the circumstances, the ratio of the decision of Letters Patent Appeal No.223 of 2000 will be helpful and applicable in the facts and circumstances of this case wherein in Paras-4 and 5 of the said judgment law laid down by the Apex Court in case of K.S.Zala Vs State of Gujarat is discussed is as under:-

> **PARA-4**:- In this case of K.S.Zala Vs. State of Gujarat (Supra), the Supreme Court also considered three earlier decisions in the case of Piyush Kantilal

Mehta (Supra); Omprakash (Supra); and Rashidmiya (Supra) and observed in para 4 that in none of the three cases relied upon by the learned counsel, the point whether public order can be said to have been disturbed on the ground that the activity of the detenue was harmful to the public health arose for consideration and that the detaining authority has not recorded such satisfaction; moreover in these three cases the detaining authority has referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public order was disturbed, whereas in the case before the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra) the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. It was also stated that the statements of the

witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of public life was disturbed in those localities for some time. That material on record clearly shows that the members of public of those localities had to run away from there or to go inside their houses and close their doors.

PARA-5:- If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is ,

of course, true that after narrating the authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgment can be read in isolation and bereft the context. The judgment is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgment are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order, material has to be there. In the case of

K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter unregistered cases and with regard to the three incidents the material germane for the purpose of consideration of the threat to the public health and public order.

Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has

simply observed that the appellant's activities were on obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself , which does not require further investigation of the facts can certainly be allowed to be raised and we allow learned counsel for the appellant to raise

this point and find that this point is not without substance. The impugned order passed by the learned single judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We therefore, do not go into other grounds which were raised on behalf of the appellants."

6. For the reasons mentioned above, the petition succeeds. The order of detention impugned cannot be said to be affecting the public order and is required to be quashed and set aside on the ground that the activities alleged to have been carried out by the petitioner on the basis of registration of crimes under the Bombay Prohibition Act, 1951 cannot have bearing on the public order or the general health of the public at large. Therefore, the order of detention 30.06.2005 passed by the Police Commissioner, Rajkot City is quashed and set aside and the detenue Sikandar Ikbalbhai Fulani is

ordered to be set at liberty forthwith, if he is not required in any other offence by any other authority.

7. Rule is made absolute with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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